

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

VANESSA POITIER

v.

SUN LIFE OF CANADA

CIVIL ACTION  
NO. 98-3056

M E M O R A N D U M

Broderick, J.

October 28, 1998

Plaintiff Vanessa Poitier filed an action in the Court of Common Pleas of Philadelphia County against Defendant Sun Life of Canada on May 7, 1998 alleging breach of contract and other state law claims arising out of Defendant's denial of long-term disability benefits. Plaintiff claims that she is entitled to those benefits under a policy provided by Plaintiff's employer, Girard College. Defendant removed the action to this Court on June 12, 1998 on the grounds that Plaintiff's claims are preempted by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. because they relate to an employee benefit plan. Plaintiff filed a motion to remand this action to state court on July 13, 1998 alleging that her claims are exempt from ERISA coverage under the governmental exception of 29 U.S.C. § 1003(b)(1). Plaintiff's motion to remand and Defendant's response thereto are currently before this Court.

It is clear, and Plaintiff does not dispute, that the breach of contract and other state law claims raised by Plaintiff for

denial of disability benefits are governed by ERISA because all of Plaintiff's claims relate to an employee benefit plan. See Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987); Shaw v. Delta Airlines, 463 U.S. 85 (1983). ERISA establishes an exclusive federal role for the regulation of benefit plans, providing that it "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). This Court has federal question jurisdiction over claims preempted by ERISA pursuant to 28 U.S.C. § 1331.

Plaintiff, however, alleges that this Court does not have jurisdiction over her claims because her claims fall under the governmental exception to ERISA, 29 U.S.C. § 1003(b)(1). Plaintiff alleges that her employment with Girard College exempts her claims from ERISA and therefore this matter should be remanded to state court. For the reasons stated below, the Court will deny Plaintiff's motion to remand.

The Court begins by recognizing that there is a dispute among the parties as to exactly by whom Plaintiff is employed. Plaintiff alleges that she is employed by the City of Philadelphia as Trustee under the Will of Steven Girard acting by the Board of Directors of City Trusts (hereinafter "Board"). Defendant alleges that Plaintiff is employed by Girard College, a private, non-profit entity managed by the Board. First, the Court recognizes that the Board is the body created by the Pennsylvania legislature to administer trust property of the City of Philadelphia. The Court also recognizes that Girard College

is administered by the Board. Finally, the Court takes notice that Plaintiff's complaint filed in the Court of Common Pleas of Philadelphia County refers to Girard College as her employer.

The term "governmental plan" as the term is used in ERISA means a plan established or maintained by the Government of the United States, by the government of any state or a "political subdivision" of any state or an agency or instrumentality of a state. 29 U.S.C. 1002(32). This governmental exception to ERISA should be read narrowly to include "organizations traditionally characterized as governmental organizations" but not "to include organizations having some significant relationship with a government but not themselves viewed as governmental." Krupp v. Lincoln University et al., 663 F. Supp. 289, 292 (E.D.Pa. 1987) (Pollak, J.).

The United States Supreme Court in NLRB v. Natural Gas Utility District, 402 U.S. 600 (1971) adopted a two part test for when an entity is a political subdivision. Under this test, an entity is a political subdivision if it is "either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or the general electorate." Id. at 604-605.

Girard College is a private institution created by the will of Steven Girard and administered by the Board in accordance with state law. It was, therefore, clearly not created by the state. Plaintiff, however, alleges that the Board is a state agency or

an arm of the state. For support, Plaintiff relies on the determination of the United States Supreme Court in Commonwealth of Pennsylvania v. Board of Directors of City Trusts, 353 U.S. 230 (1957), that the Board was an agency of the Commonwealth of Pennsylvania for 14th Amendment purposes. The Court finds that this holding is not dispositive of the issue of whether or not an employee benefit plan adopted by the Board on behalf of Girard College qualifies as a "governmental plan" under ERISA. See City of Philadelphia v. Local 473, 508 A.2d 628, 630 (Pa. Commw. Ct. 1986) (finding that the Supreme Court's decision in Board of Directors of City Trusts is not dispositive of whether or not employees of Girard College are employees of the City of Philadelphia).

The Court finds that Girard College as administered by the Board is not a political subdivision of the state within the meaning of the first part of the Natural Gas test. The United States Court of Appeals for the Third Circuit has already determined that the Board is not a city agency. School District of Lancaster v. Lake Asbestos of Quebec, Ltd. et al., 56 F.3d 515, 520 (3d Cir. 1995). Despite Plaintiff's contention to the contrary, the Third Circuit in School District of Lancaster did not decide that the Board was a state agency. Id. Rather, the Third Circuit held only that the Board was not a "non-profit association" within the meaning of the class certification at issue. Id. at 521.

The Commonwealth Court of Pennsylvania in City of

Philadelphia v. Local 473 held that employees of Girard College are not employees of the City of Philadelphia in a dispute over computation of sick leave under a collective bargaining agreement with the school. 508 A.2d 628, 630 (Pa. Commw. Ct. 1986). The Philadelphia Home Rule Charter exempts the Board and institutions operated by it from its provisions, therefore, refusing to treat the Board and Girard College as an agency or subdivision of the City. See Philadelphia Home Rule Charter § A-100(a)(3).

Under the second part of the Natural Gas test, the Court finds that Girard College as administered by the Board is not administered by people who are responsible to public officials or the general electorate. 402 U.S. at 605. The Board is composed of fifteen members, thirteen of whom are private citizens appointed by the Philadelphia Orphan's Court. The mayor of the City of Philadelphia and the President of City Council also serve as members of the Board. The mere fact that the private members of the Board are appointed by an elected official does not make the Board or the college responsible to the public within the meaning of Natural Gas. The presence of two city officials on the Board is also not sufficient to make the Board a political subdivision of the state. See, e.g. Shannon v. Shannon, 965 F.2d 542 (7th Cir. 1992), cert. denied, 506 U.S. 1028 (finding that the presence of the city comptroller as one member of a thirteen member board did not make the board responsible to city officials, the city did not have the requisite control over the board because it could not appoint or remove members of the

board, and the board was not responsible to the public because the board members were not elected by the general public).

Based upon the history and composition of the Board and the College, the Court finds that Girard College was neither created by the state nor administered by people who are responsible to public officials or the general electorate as required to qualify as a political subdivision under the test adopted by the United States Supreme Court in Natural Gas. 402 U.S. at 605. The Court therefore finds that the plan under which Plaintiff claims she is entitled to disability benefits is not a "governmental plan" within the meaning of ERISA.

An appropriate Order follows.

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**ORDER**

AND NOW, this 28th day of October, 1998; for the reasons stated in this Court's Memorandum of October 28, 1998; the Court having found that Girard College does not fit within the governmental exception to ERISA, 29 U.S.C. § 1003(b)(1);

**IT IS ORDERED:** The plaintiff's motion to remand this action to state court is **DENIED**.

**IT IS FURTHER ORDERED:** The plaintiff's request for an award of costs incurred in this Court by reason of the removal is **DENIED**.

RAYMOND J. BRODERICK, J.